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*Counsel for Plaintiff*

COMPLAINT  
Page 1 of 27

1 Plaintiff Nelly Leong, complaining of the acts of Defendant International  
2 Business Machines Corporation (“IBM”), alleges and states the following:

3 **INTRODUCTION**

4 1. In January 2020, months after celebrating her 35<sup>th</sup> anniversary as an  
5 employee of IBM, sales representative Nelly Leong was assigned to all new accounts.  
6 She had spent years building client relationships and working large accounts, but  
7 IBM re-assigned her to many new clients with smaller accounts, such as retailers and  
8 farms. Those clients soon became some of the hardest hit economically by the COVID  
9 crisis.

10 2. On June 18, 2020—only twelve days before the end of the sales period—  
11 IBM gave Ms. Leong a “Performance Improvement Plan” (“PIP”). The PIP identified  
12 six concrete goals that IBM was requiring Ms. Leong to hit in under two weeks;  
13 otherwise, she would be terminated. IBM management knew from weekly forecasting  
14 calls that the goals set forth in the PIP were unattainable. IBM terminated Ms. Leong  
15 when she failed to hit the metrics in the PIP.

16 3. Ms. Leong was beyond surprised to receive this unattainable PIP, as she  
17 had been a very successful sales representative over her career at IBM. She routinely  
18 exceeded her sales quota and received high remarks on her annual performance  
19 reviews. And while her entire sales team’s numbers were significantly down for the  
20 sales period (primarily due to COVID-19-related struggles for their accounts), she  
21 was the only sales representative put on a PIP.

22 4. Ms. Leong is informed and believes that she was the oldest sales  
23 representative on her team.

24 5. IBM did not terminate Ms. Leong because of her sales performance. IBM  
25 terminated her because of her age.  
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1           11. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a  
2 substantial part of the events or omissions giving rise to Plaintiff's claims occurred  
3 in this District.

4           12. This action has been brought within all applicable statutes of limitation  
5 and/or repose.

6                           **INTRADISTRICT ASSIGNMENT**

7           13. This action is properly assigned to the San Jose Division of this District  
8 pursuant to N.D. Cal. L.R. 3-2, because Plaintiff resides in Santa Clara County and  
9 IBM conducts substantial business in Santa Clara County which is served by this  
10 Division.

11                           **FACTUAL ALLEGATIONS**

12                           **IBM's Discriminatory Scheme**

13           14. IBM's pattern of age discrimination has recently been a focus of  
14 journalists, courts across the country, and the Equal Employment Opportunity  
15 Commission. But the foundation for IBM's discriminatory practices began years ago.

16           15. In 2014, IBM began reinventing itself in the age of the Millennial.

17           16. IBM's reinvention and rebranding began when Chief Executive Officer  
18 Ginni Rometty was hired in 2012.

19           17. IBM's reinvention and rebranding had two main objectives: (1) to  
20 transform IBM into a "Cognitive Solutions" company, invested in the Cloud, Analytic,  
21 Mobile, Security, and Social technology markets ("CAMS"); and (2) to change the face  
22 of IBM. Changing the face of IBM entailed recruiting "digitally native" Millennials,  
23 which according to IBM were those individuals born after 1980.<sup>2</sup>  
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26 <sup>2</sup> See, e.g., Transcript of Speech by Ginni Rommetty Delivered April 26, 2016,  
27 available at [https://www.ibm.com/ibm/ginni/04\\_26\\_2016.html](https://www.ibm.com/ibm/ginni/04_26_2016.html)



1           18. At a 2014 conference entitled “Reinvention in the Age of the Millennial,”  
2 IBM asserted that its “future growth will be influenced by the values system of  
3 Millennials[.]”<sup>3</sup>

4           19. Millennials represent a “trillion dollar market”—which could translate  
5 into “billions” of dollars in sales for IBM.<sup>4</sup>

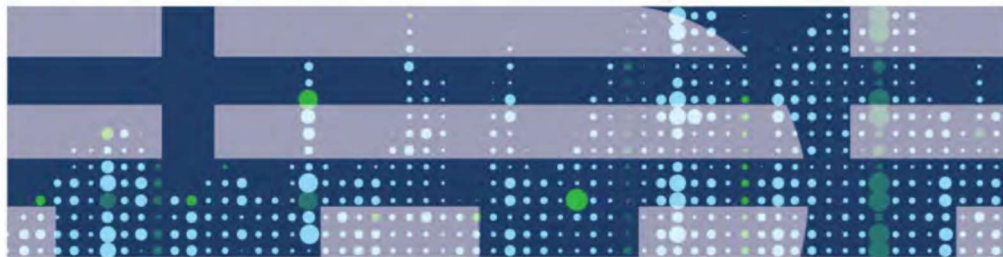
6           20. IBM made it clear to Millennials that IBM wanted to hire them. For  
7 example, IBM published an article “Millennials: How IBM can effectively attract,  
8 engage and retain this emerging generation.”<sup>5</sup>

9  
10 IBM Market Development & Insights



Market Development & Insights, Market Insights- Client Research  
November 2014

## 11 12 13 Millennials: How IBM can effectively attract, 14 engage, and retain this emerging generation



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22 <sup>3</sup> See *Reinvention in the Age of the Millennial*, IBM Center for Applied Insights Blog  
23 published December 16, 2014, accessed at  
<https://ibmcai.com/2014/12/16/reinvention-in-the-age-of-the-millennial/>.

24 <sup>4</sup> *Marketing and the Millennial Mindset – An Interview with IBM’s Samantha Klein*,  
25 The Marketing Journal, June 3, 2016, available at  
[https://www.marketingjournal.org/marketing-and-the-millennial-mindset-an-](https://www.marketingjournal.org/marketing-and-the-millennial-mindset-an-interview-with-ibms-samantha-klein/)  
26 [interview-with-ibms-samantha-klein/](https://www.marketingjournal.org/marketing-and-the-millennial-mindset-an-interview-with-ibms-samantha-klein/).

27 <sup>5</sup> *Id.*



1           21. IBM also created an “Early Professional” hiring program, targeting  
2 young professionals and enticing them to come work at IBM rather than competitor  
3 companies.<sup>6</sup>

4           22. “Mindshare converts to marketshare,” IBM wrote, and IBM’s  
5 “leadership in millennial engagement is the ideal value proposition for generating  
6 CAMS pipeline, which is driven by Millennial traits.”<sup>7</sup>

7           23. IBM also represented that “millennial employees are your most valuable  
8 and accessible asset when it comes to successfully marketing your business to the  
9 millennial generation.”<sup>8</sup>

10           24. IBM also used social media to connect with millennials. IBM created a  
11 Twitter hashtag, #IBMillennial, to ensure all millennial-related content and  
12 recruitment was congregated on one page. This hashtag was often used in tweets that  
13 praised Millennials or provided links to stories encouraging Millennials to come work  
14 for IBM.  
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22 <sup>6</sup> *IBM’s New Team to Focus on Millennials*, Business Standard, May 31, 2016,  
23 accessed at [https://www.business-standard.com/article/companies/ibm-s-new-team-to-focus-on-millennials-116053000677\\_1.html](https://www.business-standard.com/article/companies/ibm-s-new-team-to-focus-on-millennials-116053000677_1.html).

24 <sup>7</sup> “Marketing and the Millennial Mindset” – An Interview with IBM’s Samantha  
25 Klein, The Marketing Journal, June 3, 2016, available at  
26 <https://www.marketingjournal.org/marketing-and-the-millennial-mindset-an-interview-with-ibms-samantha-klein/>.

27 <sup>8</sup> *Id.*



**Cheya Cunanan** @cheyatweets · 30 Jun 2016

"We are the future, so we're building the company we want to lead"

@sarahwarsaw #IBMillennial #millennial #FF2020



**12 reasons why working for a global company is really amazing**

By Sarah Warsaw On the plane home from New York recently, I looked back at all the notes and comments I'd written down from the week. My favouri...

[blog.ibm.jobs](http://blog.ibm.jobs)



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**IBM Social Business** @IBMSocialBiz · 28 May 2015

NEXT WEEK: Uncover the potential of the #millennial minded buyer at #IBMDX15.

[ibm.co/1IN0uA6](http://ibm.co/1IN0uA6)

#IBMillennial



**"Millennials are making  
a *significant impact*  
in the workplace.  
They're not afraid of  
traditional barriers."**

—@rducre

#IBMDX15

#IBMillennial



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#IBMillennials making tremendous progress on solving tough problems by calculating desired outcomes #FF2020



1:26 PM - 14 Jun 2016

1           25. IBM also created its “Millennial Corps”—a group of more than 5,000  
2 IBMers [from] all across the world where Millennial-age and Millennial-minded  
3 IBMers come together to share ideas, feedback, and suggestions, [and] really try[] to  
4 drive change within [IBM] as ultimately [they] are the future leaders of it.”<sup>9</sup>

5           26. In 2017, IBM launched its “You” Campaign, an international branding  
6 campaign portraying IBM as a youth-oriented tech company.<sup>10</sup> Images from this  
7 campaign are copied below.  
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25 <sup>9</sup> *Inside IBM: Meet Sarah, a Millennial Corps member who works in Workforce Enablement*, available at <https://www.youtube.com/watch?v=jUmULbTzKpE>.

26 <sup>10</sup> See *Langley v. IBM*, 1:18-cv-00443(LY) Doc.#1 at 9 (W.D.T.X. May 25, 2018) citing  
27 <https://www.ibm.com/thought-leadership/you/manifesto/>.  
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## THE POWER OF YOU.

Data is the new basis of competitive advantage—for industries, for companies and for you. But no human can read, see, feel, hear and make sense of all the data that is transforming their work and their profession. IBM Cloud, with Watson, can. It's a wholly new platform for business, backed by IBMers and technologies that enable you to do your life's work. This is you to the power of IBM.

### I CAN TURN WEATHER AND TWEETS INTO HIGH-YIELD RETURNS.

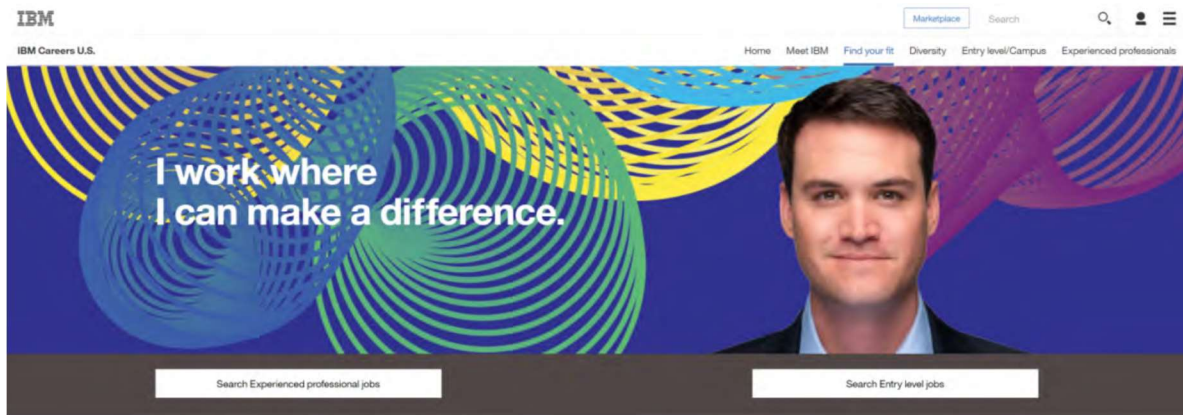
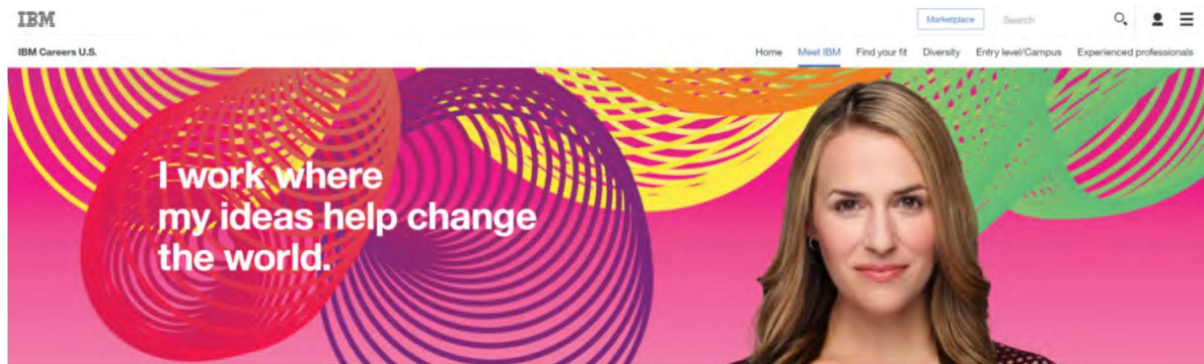
With IBM Cloud and IBM Systems, bankers can combine transactions with structured and unstructured data to detect previously invisible patterns and create new financial products. All in a secure, compliant environment. This is banking to the power of IBM.



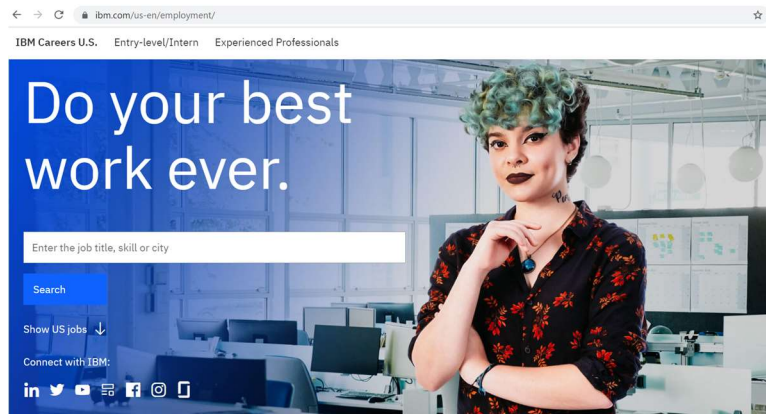
27. Looking at IBM's Career website "reveals its true culture," as IBM asserts: "[a]n organization's internal brand tells its story, and, in turn, reveals its true culture . . . . An organization's career site . . . should portray the company's internal brand." IBM's Career site includes images like the following to highlight its "true culture:"<sup>11</sup>



<sup>11</sup> Does your internal branding speak to your candidates? © Copyright IBM Corporation 2014, available at <https://www-01.ibm.com/common/ssi/cgibin/ssialias?htmlfid=LOS14030USEN>



28. IBM continues to highlight Millennials as its “true culture” on its Career website:<sup>12</sup>



<sup>12</sup> See *IBM Employment*, IBM, [www.ibm.com/us-en/employment](http://www.ibm.com/us-en/employment)



29. IBM's LinkedIn page highlights a similar age demographic:<sup>13</sup>

The screenshot displays the IBM LinkedIn page. At the top, the navigation bar includes the LinkedIn logo, a search bar, and links for Home, My Network, Jobs, Messaging, Notifications, Me, Work, and Try Premium for Free. The main header features the text "We're reinventing education". Below this, there are three distinct sections:

- Top Section:** A testimonial from a man with glasses on a red background with yellow squares. The text reads: "I work where I can help build the future." To the right, under the heading "Find your place in IBM's Cognitive Era", it states: "Great things are happening here. IBM's unparalleled technology leadership is the result of its brilliant talent: a group of IBMers who have a laser-like focus on innovation and unrelenting drive to solve some of the world's most complex problems. Find out more about our tech culture and the inspiring, interesting, and innovative projects IBMers are involved in." A "Find more" link is provided.
- Middle Section:** A testimonial from a woman on a pink background with colorful concentric circles. The text reads: "I work where I get to learn, invent and create every day." To the left, the text says: "Outthink your limits. Do work that matters. Explore life at IBM. Meet some of the inspiring IBM women who are making a difference right now." A "Find out more #WomenAtIBM" link is provided.
- Bottom Section:** A testimonial from a woman on a blue background with colorful concentric circles. The text reads: "I work where I help create the big picture." To the right, under the heading "Immerse yourself in the world of IBM.", it states: "Read about how IBMers discover their potential, how we work with diverse teams, and how we are inspired to create breakthroughs. Follow the IBM Jobs Blog to gain career insights from IBMers, learn about company news and the latest technology trends, and to find out why IBM is considered one of the best places to work. Follow the IBM Jobs Blog." A "Find out more at IBM Jobs Blog" link is provided.

<sup>13</sup> See, <https://www.linkedin.com/company-beta/1009/life/>.



1           30. IBM has devoted years and millions of dollars to cultivating a millennial  
2 focused hiring model and work environment.<sup>14</sup> All of the actions described above are  
3 meant to be illustrative, not exhaustive, and provide a history of IBM's actions over  
4 the last six years.

5           31. IBM even went so far as to publish an article contrasting Millennials  
6 with Generation X and Baby Boomers.<sup>15</sup>

7           32. IBM's branding message is clear: older employees are no longer welcome  
8 at IBM.

9           33. IBM's age discrimination is not limited to recruitment.

10          34. IBM has implemented reductions in force of its older employees to make  
11 room for its new wave of younger employees.

12          35. Working at IBM for years does not save an employee from termination.  
13 IBM has terminated many individuals over 40 "Resource Actions,"—IBM's term for a  
14 reduction in force.<sup>16</sup> These reductions shielded younger employees from layoffs and  
15 targeted older employees.

16          36. To avoid attracting attention to the age of the employees subjected to  
17 Resource Actions, IBM stopped requesting ADEA releases from terminated older  
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22 <sup>14</sup> See, e.g., *17 IBM rock star employees that show the company's new direction*, The  
Business Insider, April 9, 2015, available at

23 <http://www.businessinsider.com/ibm-rock-star-employees-2015-4>.

24 <sup>15</sup> See *IBM Study: The Real Story Behind Millennials in the Workplace*, IBM,  
<https://www-03.ibm.com/press/us/en/pressrelease/45904.wss>

25 <sup>16</sup> See, e.g., *IBM Age Discrimination Litigation: Estle, et al. v. Onternational*  
26 *Business Machines Corporation*, Cohen Milstein,  
27 [https://www.cohenmilstein.com/case-study/ibm-age-discrimination-litigation-estle-  
et-al-v-international-business-machines](https://www.cohenmilstein.com/case-study/ibm-age-discrimination-litigation-estle-et-al-v-international-business-machines)

1 workers. This also helped IBM avoid maintaining records showing the number of  
2 older employees being terminated.<sup>17</sup>

3 37. Although IBM stopped requesting releases of ADEA claims, it still  
4 required any older worker who accepted IBM's one-month severance offer to privately  
5 arbitrate their ADEA claims. This was also subject to limited discovery and a full  
6 waiver of the right to pursue or participate in a collective action under the ADEA.

7 38. In 2018, following a lengthy investigation, journalists published an  
8 extensive report exposing how IBM targeted its older employees with layoffs and  
9 forced retirements to make room for the Millennials it desired to bring into its  
10 workforce.<sup>18</sup>

11 39. This investigation found that 60% of the U.S. employees ousted by IBM  
12 in the previous five years were age 40 or over—individuals protected by federal  
13 discrimination law.

14 40. Following the ProPublica report on IBM's practices of age  
15 discrimination, the EEOC launched an investigation in May 2018.<sup>19</sup>

16 41. Other than a case in 2017, "this is the first age discrimination case the  
17 EEOC has gone the distance on in a long time[.]" which is an important distinction  
18 because "the EEOC is a small agency, and investigations are expensive and lengthy.  
19 There are few cases of any kind it pursues, but [the EEOC] took on IBM and  
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23 <sup>17</sup> See *IBM Halts Practice of Disclosing Ages of Fired Older Workers*, AARP Work  
24 Matters, May 12, 2014, available at <http://blog.aarp.org/2014/05/12/ibm-halts-practice-ofdisclosing-fired-older-workers/>.

25 <sup>18</sup> See, *CUTTING 'OLD HEADS' AT IBM*, March 22, 2018, available at  
26 <https://features.propublica.org/ibm/ibm-age-discrimination-american-workers/>.

27 <sup>19</sup> <https://www.propublica.org/article/the-u-s-equal-employment-opportunity-commission-confirms-a-pattern-of-age-discrimination-at-ibm>.

1 confirmed what [the journalists had already uncovered] – there was a deliberate  
2 pattern of systemic age discrimination.”<sup>20</sup>

3 42. In August 2020, the EEOC concluded its investigation.<sup>21</sup>

4 43. The EEOC concluded that IBM engaged in systematic age  
5 discrimination between 2013 and 2018, the time period it investigated.

6 44. The EEOC’s letter to a group of ex-IBM employees stated that it  
7 “uncovered top-down messaging from (IBM’s) highest ranks directing managers to  
8 engage in an aggressive approach to significantly reduce the headcount of older  
9 workers to make room for” younger workers.

10 45. The EEOC found that more than 85% of those targeted for layoffs by  
11 IBM were older workers.

12 46. The EEOC’s decision may apply to more than 6,000 employees.

13 47. Although the EEOC’s investigation only spanned 2013 through 2018,  
14 IBM’s discriminatory behavior has continued through 2020.

15 48. In addition to targeting older workers through Resource Actions, many  
16 individuals over 40 have been subjected to arbitrary and impossible-to-satisfy  
17 performance improvement plans, which ultimately lead to their termination. *See, e.g.,*  
18 *Kinney et al v. International Business Machines Corporation*, No. 1:20-cv-00969-LY,  
19 Doc. #1 at 13-15 (W.D. Tex. Sept. 18, 2020).

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25 <sup>20</sup> <https://www.forbes.com/sites/sheilacallaham/2020/09/20/eec-finding-of-age-discrimination-against-ibm-signals-new-requisite-for-diversity-equity-and-inclusion/#69d885f53793>

26 <sup>21</sup> <https://www.propublica.org/article/the-u-s-equal-employment-opportunity-commission-confirms-a-pattern-of-age-discrimination-at-ibm>.

1 49. IBM even fired an executive who warned the company's superiors that  
 2 IBM was leaving itself open to allegations of age discrimination based on its  
 3 conduct.<sup>22</sup>

4 **Ms. Leong is a Victim of IBM's Discriminatory Practices**

5 50. In 1983, Ms. Leong joined IBM as a college intern.

6 51. After earning her bachelor's degree, Ms. Leong began working for IBM  
 7 as an industrial engineer. In 1987, she moved into a sales role with IBM in New York,  
 8 NY.

9 52. In 1996, after a brief stint in IBM's marketing department, Ms. Leong  
 10 transitioned back into sales and began working for IBM in California.

11 53. Since that time, Ms. Leong worked in various sales roles in California,  
 12 routinely achieving great success and receiving high marks on her annual  
 13 performance reviews.

14 54. Throughout her career at IBM, Ms. Leong received numerous awards  
 15 and recognitions, including:

- 16 a. She was named in 2012, 2013, 2016, and 2017 as a member of IBM's  
 17 "100% Club," which recognizes sales employees who exceed their quota  
 18 for both sales periods in a year;
- 19 b. In 2018, she was named "Best of IBM," which is an award that goes to  
 20 the top 0.25% of IBM's employees;

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 25 <sup>22</sup> See *IBM Executive Says she was Told not to Disclose the Names of Employees Over*  
 26 *age 50 Who'd Been Laid off*, ProPublica, [https://www.propublica.org/article/ex-ibm-](https://www.propublica.org/article/ex-ibm-executive-says-she-was-told-not-to-disclose-names-of-employees-over-age-50-whod-been-laid-off)  
 27 [executive-says-she-was-told-not-to-disclose-names-of-employees-over-age-50-whod-](https://www.propublica.org/article/ex-ibm-executive-says-she-was-told-not-to-disclose-names-of-employees-over-age-50-whod-been-laid-off)  
 28 [been-laid-off](https://www.propublica.org/article/ex-ibm-executive-says-she-was-told-not-to-disclose-names-of-employees-over-age-50-whod-been-laid-off)

- 1 c. In 2018, she was awarded a 15% raise, far above the standard at IBM,  
2 in recognition of her performance and value to IBM; and  
3 d. Her annual employment reviews were overwhelmingly positive every  
4 year.

5 55. Ms. Leong formed meaningful relationships with the accounts she  
6 managed, which increased her likelihood of success as a sales representative in the  
7 future.

8 56. The ability to work on accounts for a longer duration allows sales  
9 representatives to cultivate meaningful relationships, which ultimately relates to  
10 their success in this role.

11 57. IBM's sales periods are broken into six-month blocks. The period from  
12 January 1 through June 30 is referred to as the First Half (or "1H"), and the period  
13 from July 1 through December 31 is referred to as the Second Half (or "2H").

14 58. IBM assigned quotas to sales representative for each period. These  
15 quotas were based on the sales made on a representative's accounts in the previous  
16 year; a large sale on an account would lead to an increased quota the following year.

17 59. In the First Half of 2019, Ms. Leong was the sole representative covering  
18 numerous accounts.

19 60. In July 2019, at the beginning of the Second Half, IBM took Ms. Leong  
20 off the accounts she had spent substantial time cultivating.

21 61. Despite the success she had achieved on these accounts and the  
22 meaningful relationships she had formed, Ms. Leong was assigned to two new roles  
23 over the following six months, each of which set her up for failure.  
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1           62. The first role was in what is known as an overlay position. This meant  
2 that Ms. Leong no longer had dedicated accounts of her own. Instead, she supported  
3 the rest of her team in covering their accounts.

4           63. She was told at the time that she was being assigned to this position  
5 because she was the most experienced in selling the products and would be able to  
6 help the entire team hit its sales goals by supporting them.

7           64. When IBM moved Ms. Leong into this role, it hired a new sales  
8 representative to cover Ms. Leong's accounts. Ms. Leong believes the new sales  
9 representative that replaced her was at least 10 to 15 years younger than she was.

10           65. Because she no longer had any dedicated accounts of her own and was  
11 only acting in a support role, Ms. Leong had little to no control over whether she  
12 actually hit her sales quota.

13           66. Indeed, in this role, Ms. Leong was expressly prohibited from contacting  
14 accounts on her own and could only attend client meetings when brought in by her  
15 teammates.

16           67. Ms. Leong's role was further limited in that she was only assigned to  
17 specific products within the territories of the other sales representative. Since the  
18 other representatives had broader product sets within their territories than what Ms.  
19 Leong was assign to, the other reps could close sales that helped them hit their  
20 numbers, but left Ms. Leong out in the dark with no way to close her own deals to  
21 meet her quota.

22           68. At the beginning of 2020, Ms. Leong was again assigned to a new role.

23           69. Starting in January, Ms. Leong was given a series of small accounts and  
24 forced yet again to form new business relationships.  
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1           70. Most of the accounts Ms. Leong received in this role were retailers and  
2 small farms selling to restaurants, and a few months later they were struggling as a  
3 result of the COVID-19 pandemic.

4           71. Ms. Leong's new accounts also included food processors, an airline, and  
5 a travel company, all of which were also severely impacted by the COVID-19  
6 pandemic and not interested in purchasing new products or services from IBM.  
7 Indeed, some of these accounts had massive layoffs of their employees and were on  
8 the verge of bankruptcy.

9           72. More than 40% of Ms. Leong's new accounts were in Washington and  
10 Oregon, which were both substantially impacted by the pandemic for the majority of  
11 the 1H 2020 sales period.

12           73. Despite all of this, Ms. Leong closed multiple deals in the 1H 2020 using  
13 her experience and creativity.

14           74. During this period, Ms. Leong was on a sales plan named "SRAP," which  
15 stands for "Straight Rate Absolute Sales."

16           75. The SRAP plan includes no quotas and no revenue targets. Instead, Ms.  
17 Leong was simply paid a percentage of the sales she closed.

18           76. Ms. Leong participated in a forecast call with her manager each week  
19 during the 1H 2020.

20           77. Ms. Leong's management team at IBM was aware of her sales and sales  
21 projections for the sales period.

22           78. Despite 35 years of success as an IBM sales representative, Ms. Leong  
23 was notified in June 2020 that she would be required to engage in a Performance  
24 Improvement Plan ("PIP").  
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1           79. Typically, an individual has at least one full sales period to meet the  
2 objectives outlined in a PIP. This makes sense, as the point is to give the employee a  
3 chance to improve his or her performance by achieving the goals in the PIP.

4           80. Inexplicably, Ms. Leong was given twelve days instead of six months.

5           **Ms. Leong was Put on a Sham “Performance Improvement Plan”**  
6           **and Given 12 Days to Hit Metrics That Were Unattainable**

7           81. On June 18, 2020, twelve days before the end of the incentive period,  
8 Ms. Leong received a phone call from her manager, Robert Cortez (“Mr. Cortez”).

9           82. During this phone call, Mr. Cortez informed Ms. Leong that she was  
10 being placed on a PIP at the direction of his boss, Todd Stacy.

11           83. The PIP included six unrealistic targets that Ms. Leong was required to  
12 meet or else she would be terminated.

13           84. The first target was that Ms. Leong needed to close \$300,000 of revenue  
14 by June 30, 2020, which was 12 days after the PIP was initiated.

15           85. The second target was that Ms. Leong needed to close \$760,000 by July  
16 22, 2020.

17           86. Another of these targets was to build a \$4.23 million pipeline. Although  
18 the PIP gave a deadline of “by July 22, 2020” for this metric to be satisfied, Mr. Cortez  
19 told Ms. Leong that the pipeline was for the second quarter, which was less than 2  
20 weeks away from ending when her PIP was initiated.

21           87. Because the PIP mandated specific revenue targets, it contradicted the  
22 SRAP Plan Ms. Leong was on at the time.

23           88. Ms. Leong informed Mr. Cortez that the targets in the PIP appeared to  
24 be designed to be unachievable, to which Mr. Cortez replied that “that’s how it is. It  
25 is all about the numbers.”  
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1           89. IBM informed Ms. Leong that she was given a PIP because her numbers  
2 were down.

3           90. But the numbers of Ms. Leong's teammates were similarly down, and  
4 these other individuals were not given improvement plans.

5           91. No other member of Ms. Leong's sales team was subjected to a PIP.

6           92. Ms. Leong was the longest tenured IBM employee on her team, and the  
7 oldest.

8           93. Additionally, Ms. Leong exceeded all but one objective on her 2019  
9 assessment.

10          94. On July 22, 2020, after Ms. Leong failed to hit the unattainable goals in  
11 the PIP, IBM terminated her.

12          95. As of the date of her termination, Ms. Leong was 59 years old.

13          96. As of the date of this Complaint, Ms. Leong is 59 years old.

14          97. Ms. Leong has met all conditions precedent to the bringing of this action.  
15

16                           **Ms. Leong Was Forced Out of IBM**  
17                           **Due to Her Age**

18          98. In October 2019, Sandy Florey, Ms. Leong's first line manager, and Todd  
19 Stacy, Ms. Leong's second line manager, publicized to the team that Ms. Leong was  
20 to be celebrated by her peers for 35 years of tenure at IBM.

21          99. Upon information and belief, Ms. Florey and Mr. Stacey knew at least  
22 as early as the beginning of the 2H 2019 sales period (when Ms. Leong was first  
23 assigned to a new role) that she was celebrating her 35<sup>th</sup> anniversary with the  
24 company.

25          100. Because her management team knew she had been at IBM for 35 years,  
26 they knew that she was likely in at least her late 50s.

**FIRST CLAIM FOR RELIEF**  
**Violation of the Age Discrimination in**  
**Employment Act of 1967, 29 U.S.C. § 621 *et seq.***

101. Plaintiff re-alleges and incorporates the prior paragraphs of this Complaint as if fully set forth herein.

102. At the time of her termination, Ms. Leong was 59 years old.

103. On October 31, 2019, IBM announced Ms. Leong's 35<sup>th</sup> work anniversary at the company.

104. IBM, and in particular, Ms. Leong's managers, were aware of Ms. Leong's age.

105. Ms. Leong performed her job successfully during her lengthy time at IBM.

106. Ms. Leong received high performance reviews, including in 2019, and was chosen for a special sales team.

107. Ms. Leong was terminated in July 2020 because of her age.

108. In 2019, Ms. Leong was replaced by a substantially younger employee, who was in her 30's or 40's.

109. The overall circumstances of Ms. Leong's termination give rise to a strong inference of age discrimination.

a. Shortly after her work anniversary was announced, she was assigned to new accounts, with a lower chance of success.

b. Even though her bosses were aware of her forecasts, and even though no quotas were required under her SRAP plan, she was given a PIP twelve days prior to the end of the incentive period.



1 c. The PIP itself included unattainable and unrealistic goals designed to  
2 ensure that Ms. Leong could not meet them and would be subsequently  
3 terminated.

4 110. On October 8, 2020, Ms. Leong filed her Charge of Discrimination  
5 (“Charge”) with the EEOC, which is a signed statement asserting that IBM engaged  
6 in employment discrimination and requesting the EEOC take remedial action.

7 111. On the same day Ms. Leong filed her Charge with the California  
8 Department of Fair Employment and Housing.

9 112. On October 8, 2020, the California Department of Fair Employment and  
10 Housing sent Ms. Leong her Right-to-Sue Notice.

11 113. On December 7, 2020, 60 days passed from the date Ms. Leong filed her  
12 Charge with the EEOC.

13 114. As a direct result of IBM’s discrimination, Ms. Leong has been injured  
14 and suffered damages, including emotional distress and wage and benefits losses.

15 115. As a direct result of IBM’s pretextual criticisms of Ms. Leong’s  
16 performance, including initiating a PIP that remains part of her employment record,  
17 Ms. Leong has lost earnings capacity.

18  
19 **SECOND CLAIM FOR RELIEF**  
20 **Age Discrimination in Violation of California Fair Employment and**  
21 **Housing Act, Cal. Gov’t Code § 12900 *et seq.***

22 116. Plaintiff re-alleges and incorporates the prior paragraphs of this  
23 Complaint as if fully set forth herein.

24 117. Ms. Leong is 59 years old.

1           118.       IBM engaged in the conduct set forth above based, in part, on Ms.  
2 Leong's age.

3           119.       Specifically, IBM assigned her to new, small accounts to set her up for  
4 failure and instituted a PIP for Ms. Leong and not other similarly situated members  
5 of her team.  
6

7           120.       IBM's conduct violates the California Fair Employment & Housing  
8 Act and has caused injury to Ms. Leong in that she is no longer employed at IBM  
9 after 35 years. Additionally, she is still unemployed and has been unable to find  
10 suitable employment to date.  
11

12           121.       Ms. Leong is entitled to recover damages in the form of back pay and  
13 front pay, and for the emotional distress that IBM has caused her. She is also entitled  
14 to recover reasonable attorneys' fees, interest and costs, pursuant to the California  
15 Fair Employment & Housing Act.  
16

17           122.       Ms. Leong has satisfied the requisite administrative requirements  
18 necessary in order to pursue to this action in court.  
19

20                   **PRAYER FOR RELIEF**

21           WHEREFORE, Ms. Leong prays the Court for the following relief:

22           1.       That IBM be ordered to pay Ms. Leong back pay and benefits with  
23 interest and emotional distress damages;

24           2.       That IBM be ordered to reinstate Ms. Leong to her former position with  
25 all lost pay and benefits, seniority, and promotions;  
26  
27

1           3.     That IBM be required to pay Ms. Leong front pay and benefits in the  
2 event reinstatement does not occur;

3           4.     That Ms. Leong have and recover from IBM for violations of the  
4 California Labor Code, plus interest, costs, and attorneys' fees as allowed by law;

5           5.     That Ms. Leong be awarded attorneys' fees and costs;

6           6.     That Ms. Leong be awarded punitive damages; and

7           7.     That the Court award Ms. Leong such other and further relief as this  
8 Court may deem just and proper.

9                                   **JURY DEMAND**

10                               PLAINTIFF DEMANDS A TRIAL BY JURY.

11  
12  
13           Respectfully submitted, this the 23<sup>rd</sup> of February 2021.

14  
15  
16                                   /s/ Alex R. Straus

17                               Alex R. Straus (SBN: 321366)

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*Counsel for Plaintiff*

\* motion for admission *pro hac vice*  
forthcoming